



May 16, 2003

Honorable Gale Norton
Secretary of Interior
1849 C Street NW, Room 6156
Washington, D.C. 20240

Dear Secretary Norton:

I am writing to express my strong concern about the Department of Interior's recent efforts to change the rule and alter the processes under which highway right of ways can be claimed. (Conveyances, Disclaimer and Correction Documents Rule, 43 CFR Part 1860.)

The use of the Department's "disclaimer of interest" rule to allow highway claims under Revised Statute (R.S.) 2477 will have significant and unacceptable impacts on federally protected lands in California. More than 2,500 miles of roads claimed in the Mojave National Preserve would crisscross this desert wilderness, destroying the serenity and threatening the sensitive habitat the Preserve was created to protect. Claims have been asserted for roads through the heart of Joshua Tree National Park and Death Valley National Park.

Elsewhere throughout California, national parks, monuments, wildlife refuges and even portions of our coastline would be opened up to virtually unlimited vehicle use. This strikes at the very heart of the concepts of preserve and wilderness that Californians hold dear, and that they have come to expect from these federally protected lands. These claims impose burdens on state transportation planning, wildlife management, recreation, and habitat and environmental protection, and will expose the state to unnecessary liability and budgetary impacts. They could also cross sensitive lands and areas of the state that are considered of special cultural and traditional significance to Native Americans.

I, therefore, respectfully request that you do not process any disclaimers involving R.S. 2477 right-of-way claims in California.

RS 2477, enacted in 1866 and repealed in 1976, essentially granted rights of way for the "construction" of "highways" across unreserved public lands. The new Disclaimer Rule, however, would encourage local governments and others to claim that trails, dry streambeds, livestock trails and other primitive routes as "highways." Indeed, even the tracks of a single off-road vehicle have been so claimed. What is more unsettling, under the new rule, these claims could be proposed by any entity, organizations or individuals – you have established no regulations or limitations as to who may make these claims.

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The new rule establishes an approach that is inconsistent with recent jurisprudence on this issue. Recent federal cases have ruled that construction requires actual labor to create a durable travel surface, and that "highways" must have identifiable destinations. The Department of Justice recently advocated this interpretation of the law under your current Administration.

California places a strong emphasis on meeting the transportation needs of the public in a safe and environmentally sound manner. The new rule, however, supports piecemeal and haphazard designation of roads and highways under R.S. 2477, striking a blow at efforts to engage in rational transportation planning based on a well-considered and thoughtful process.

Efforts to manage California's wildlife and watershed resources – especially programs to protect our threatened and endangered species – also depend on careful planning and coordination with federal management agencies. Ill-conceived roads can, however, fragment habitat, destroy crucial wildlife corridors, and degrade water quality.

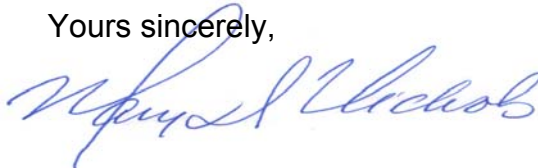
The haphazard designation of roads also throws into disarray the efforts and considerable investment many California counties have made into the development of comprehensive, integrated regional plans.

Finally, I am disappointed that the present Disclaimer Rule was developed without consulting California, and that DOI is developing the standards by which R.S. 2477 applications will be evaluated without consultation with California or, indeed, any members of the public. This flies in the face of your stated methods of operation -- communication, consultation and cooperation—and threatens the ultimate goal that you and I both share: the conservation of our natural legacy for future generations.

Recent actions your Department has taken regarding R.S. 2477 threaten that legacy. Therefore I once again make clear that I respectfully request that you do not process any disclaimers involving R.S. 2477 right-of-way claims in California.

Thank you for your time and consideration of this important matter.

Yours sincerely,



Mary D. Nichols
Secretary for Resources

Cc: Senator Dianne Feinstein
Senator Barbara Boxer
California Congressional Delegation